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No. 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

DONALD JOSEPH AND PAUL PIERCE,

Petitioners,

v.

STATE OF INDIANA,

Respondent.

RESPONDENT'S BRIEF

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JURISDICTION

Because of language contained in petitioners' statement of the case and their argument, respondent would respectfully call attention to the Court's order granting certiorari in the cause which is as follows:

> "On consideration of the motion for leave to proceed herein in *forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in *forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is here-

> by, granted limited to the question of the admissibility of the confession. The case is transferred to the appellate docket as No. 548 and placed on the summary calendar." (R., 213.)

The Court has, therefore, limited this cause to consideration of the admissibility of the confessions.

STATEMENT OF THE CASE

In the first paragraph of their statement of the case in their brief, petitioners refer to the admission of alleged conversations held between them and certain police officers. As respondent understands the order of the Court quoted above, these conversations are outside the limited question before this court.

If these conversations are considered by the Court under its order granting certiorari, then the shading given their admission by the petitioners' insertion of wording not present in the original objections should be noted. On page 2 of their brief, petitioners say that they objected to the presentation of testimony in evidence of certain alleged conversations between petitioners and police officers "* * * for the reason that at the time in question petitioners were wounded, had lost considerable blood and were in pain * * *." This statement is not supported by the record. Petitioners first objection appears on page 46 of the printed record and contains no reference whatever to the physical condition of petitioners. In renewing their objection (R-49) this statement is made "* * * object for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge of any medical attention he had received * * *." The

objections referred to in petitioners' statement of the record as appearing on pages 154-155 of the record contain no reference to the physical condition of petitioners and are, of course, made to testimony from a different witness than the one whose testimony appears on page 49 of the record.

In paragraph two of their statement of the case appearing on pages 2 and 3 of their brief, petitioners state that they objected to the admission of confessions obtained through the use of force, duress, intimidation and the threats to withhold and the actual withholding of medical treatment and refer to certain pages of the printed record. This statement is inaccurate in that it fails to point out that hearings were held outside the presence of the jury on the admissibility of these confessions and that the evidence was in sharp conflict. (R., 56-98, R., 156-170.)

SUMMARY OF ARGUMENT

Petitioners, Donald Joseph and Paul Pierce, signed written confessions which were admitted over their separate objections at their trial in the Circuit Court of Hancock County, Indiana. Petitioners' version of the events preceding their confessions, if true, would have constituted a denial of their constitutional rights. As to each confession, however, the trial Court held hearings outside the presence of the jury on the issue of admissibility as affected by petitioners' claims of coercion, intimidation and duress. The evidence presented by petitioners was in both cases contradicted in every detail by evidence introduced by the State. At the conclusion of the hearing on Pierce's confession, the Court admitted it as to Pierce, but excluded

it as to Joseph. At the conclusion of the hearing on Joseph's confession, the Court admitted it as to Joseph, but excluded it as to Pierce.

On review of State convictions in which it is claimed that the admission of coerced confessions vitiated convictions for murder, this Court has stated that any conflict in testimony as to what actually led to a contested confession is not the concern of the Supreme Court of the United States.

Watts v. Indiana (1949), 338 U. S. 49, 51, 69 S. Ct. 1347, 1348.*

As stated in the Watts case, *supra,* only those elements of the events and circumstances in which a confession was involved that are unquestioned in the State's version of what happened are relevant to the constitutional issues in this Court. There are no such issues in the record in this cause.

In Indiana, failure to take an accused before a magistrate does not deprive a trial Court of jurisdiction, and does not make confessions obtained prior to appearance before a magistrate inadmissible.

Willennar v. State (1949), 228 Ind. 248, 252, 91 N. E. (2d) 178;

Marshall v. State (1948), 227 Ind. 1, 10, 83 N. E. (2d) 763;

Hicks v. State (1938), 213 Ind. 277, 11 N. E. (2d) 171.

*Thomas v. State of Arizona (1958), _____U.S._____, 78 S. Ct. 885, 892.

ARGUMENT

I

IN ANSWER TO PETITIONERS' ARGUMENT STARTING IN THEIR BRIEF AT PAGE 5

Petitioners argue on page 5 of their brief as follows:

> "Throughout the proceedings in the Courts of Indiana, petitioners claimed that rights protected by the United States Constitution had been denied them through the use of oral statements elicited and written confessions obtained through the use of force, duress, intimidation and the denial of necessary medical attention by state custodial officers."

In support of such statement petitioners refer to the following pages of the printed record: R., pp. 46, 49, 50, 54, 55, 107, 108, 135, 154, 155 and 157. These cited pages of the record support petitioners' above-quoted statement only in part. An examination of the objections appearing on pages 46, 50, 135, 154, and 155 of the printed record shows that they contain no reference to the physical condition of petitioners.

The objection which appears on page 135 of the printed record is to the testimony of Matt Leach, who was at the time of the commission of the crime, Captain in charge of the Indiana State Police. (R., 133.) Leach testified that as soon as petitioners were brought to State Police Headquarters, they were brought to him. Leach testified that both petitioners had bandaged arms and that, therefore, he called Doctor Bird (elsewhere in the record referred to as Doctor Beard), the State Police physician, that Doctor Bird spent an hour with petitioners treating their wounds,

and that Doctor Bird was paid by petitioners from money they had in their possession when they were captured. (R., 133-142.)

After the above-quoted section of their brief, petitioners state that the United States Supreme Court will examine and appraise evidence as it relates to petitioners' constitutional rights and cite cases to support this contention. Respondent agrees that this is the law.

II

IN ANSWER TO PETITIONERS' ARGUMENT STARTING AT PAGE 6 OF THEIR BRIEF

Beginning in the middle of page 6 of their brief, petitioners make the statement that "uncontradicted testimony" shows certain facts and then summarize the case beginning with the commission of the crime and ending with their admission to a hospital after their confessions.

They then state:

> "The facts and circumstances which are uncontradicted establish that the oral statements and the written confessions were not the result of the free choice of petitioners but rather flowed from the long gruelling questioning, physical exhaustion and desire to obtain medical treatment of their wounds brought about by State Officers while held incommunicado and without due process and equal protection."

The above statement is not correct. Petitioners allegations as to the evidence, which if true, would have shown a denial of constitutional rights, were sharply contradicted

by testimony given at the trial of this cause in hearings held outside the presence of the jury.

The Confession of Paul Pierce

The hearing on the confession of Paul Pierce begins on page 56 of the printed record and ends on page 97. It includes the testimony of Paul Pierce, Jesse McCarty, John Giles and Roy Pope. Paul Pierce testified that he was wounded in a gun battle with police officers Chatham and Quinnette shortly after noon on December 7, 1935, that he was arrested at 1:30 in the morning of December 10, that he had had no medical attention from the time he was wounded until his arrest, that he arrived at State Police Headquarters in the State House in Indianapolis about 2:30 in the morning of December 10, 1935, and was held there until 8 or 9 o'clock the next morning, that he received no medical attention while at State Police Headquarters and that about 9 o'clock he was taken to Indianapolis City Police Headquarters by four Indianapolis police officers including detectives Pope, McCarty, Gish and Auls. Pierce further testified that as they came down the steps of the State House, detective Pope said something like, "Why don't you run now, you son of a bitch?", that he was taken into a small interrogation room at City Police Headquarters where police officers were present and that he and Donald Joseph were not taken to the same interrogation room, that he was weak, had had nothing to eat, had lost a lot of blood, had chills and was thirsty, that he had had no sleep to amount to anything for the previous three nights, that he was in pain, that his left arm was almost completely paralyzed, that he had not been taken before a magistrate, that he did not advise with any attor-

ney or talk to any relatives or friends, that he was denied drinking water, that the questioning of him began at 8 or 8:30 in the morning and continued all day until around 4 or 5 o'clock in the evening, that he was questioned later on in the night by two or three groups of officers, that he received no medical attention during the day, that he did not sign a written statement that day, that he was placed over night in a jail cell 6 ft. wide by 8, 9 or 10 ft. long with no furniture of any kind in the cell, with no bed, without any outside ventilation, that it was cold in the cell, that it was too cold to sleep on the floor, that he was given no bed clothing, that he was not permitted to communicate with anyone during the night. Pierce further testified that he asked to contact an Indianapolis Attorney named Ernest Owens shortly after he arrived at the police station and officer Pope threw Owen's card on the floor and told Pierce that he did not need an attorney; that after a sleepless night in a bare jail cell and without receiving any food or medical attention and after requesting officer Pope several times to get him medical attention, he was again questioned on December 11 by officers Pope, McCarty, and John Giles; that officer Gish hit him, bloodied the left side of his mouth and knocked him down on the floor, that Gish then kicked him in the stomach about a half dozen times and while this was going on the Chief of Detectives entered the room and made the officer stop; that after receiving no medical care at any time on the 11th of December and late on the evening of the 11th he signed the statement which the State now sought to introduce and that after signing the statement he was taken to City Hospital for medical treatment. On cross-examination he testified that he did not know that officer Gish was the only one of the officers now dead. (R., 56-78.)

Officer McCarty testified at the hearing held outside the presence of the jury that he did not strike Pierce, call him a "son of a bitch" or see anyone else strike him; that he was one of the Officers who went to the State House to get Pierce and Joseph around 9 o'clock on the morning of December 10; that they were informed by State Police Officers that both Pierce and Joseph had received medical attention from Doctor Beard, the State Police physician, and that they were physically able to be taken to jail; that Pierce signed the statement the State offered to introduce as evidence as State's Exhibit 6 on the same morning, that is, the morning of December 10 and that Pierce was taken to City Hospital sometime around noon of December 10; that he showed no signs of physical pain and that after receiving medical attention, he was returned to Police Headquarters where an additional statement was made, concerning activities with Joseph after his escape from Michigan City State Prison. (R., 78-90.)

Officer Giles testified that he was present during the questioning of Paul Pierce on December 10; that he saw no physical duress used on the defendant; that Pierce did not complain of his injuries; that Officer Gish was not present at anytime during the taking of Pierce's statement. (R., 90-93.)

Officer Pope testified that he was one of the Officers who went to Indiana State Police Headquarters to get Pierce and Joseph, that he did not call Pierce a "son of a bitch"; that he questioned Joseph while officers were questioning Pierce and that both Pierce and Joseph went to the Hospital on that same day, the 10th; that Pierce made no complaints about his injuries; that he was not questioned at any time on the 11th and that Pierce talked freely concerning the shooting of Quinnette. (R., 93-97.)

After these conflicting stories concerning the incidents which led to the signing of the statement by Paul Pierce, the Court overruled the objections to the introduction of State's Exhibit 6 as to Paul Pierce and sustained them as to Donald Joseph. (R., 97.)

The Confession of Donald Joseph

When the State sought to introduce the confession of Donald Joseph, State's Exhibit 4, the defendants objected and a hearing was held outside the presence of the jury to determine the admissibility of this confession. (R., 156-170.) At the hearing outside the presence of the jury, evidence was heard from the defendant Donald Joseph and Police Officer Roy Pope.

Joseph's testimony was, in part, as follows: He was arrested and taken to Indiana State Police Headquarters and from there to Indianapolis City Police Headquarters by officers Pope, Auls, Giles and another detective; that he was wounded and had lost some blood and had no medical treatment for nearly 72 hours; that he received no medical attention while at State Police Headquarters; that he was not taken before a magistrate or advised of his constitutional rights, that he had no advice from an attorney; that Officer Pope made the statement on the steps of the State House, "Why don't you run now you son of a bitch"; that after arriving at State Police Headquarters, he asked Officer Pope many times to get him a lawyer and that Pope did not do so; that his questioning began around 9:30 in the morning of December 10 and continued until 5 o'clock that evening; that he did sign the statement; that he was told as soon as he signed the statement he would get medical attention; that he was told this by Officer Pope;

that he was held for a period of 30 hours before he received medical attention and that he signed the statement on the 11th of December after spending the night in a bare jail cell with little sleep; that he received no hospitalization; that he was kicked by Officer Pope as he was coming through the door back into the interrogation room; that he signed the statement around 3 o'clock on the afternoon of December 11th. (R., 158-167.)

Officer Pope testified that, during the time he took the statement from Donald Joseph, he did not in any way physically harm Joseph or touch him or see anyone else do so; that Joseph did not demand a lawyer; that he accompanied Joseph to the hospital and that Joseph had received medical attention from Doctor Beard prior to being turned over to the Indianapolis Police. (R., 168-170.)

At the conclusion of Pope's testimony the jury was recalled, the objection to the introduction of State's Exhibit 4 as to Donald Joseph was overruled and was sustained as to Paul Pierce.

CONCLUSION

It is obvious that there is no uncontradicted testimony of the type described by petitioners in their brief. The evidence is in complete conflict and on this question the trial Court found against petitioners. Respondent submits that the finding of the trial Court was not unreasonable and is conclusive in regard to the disputed questions of fact surrounding the confessions of petitioners.

The petitioners herein, Donald Joseph and Paul Pierce, each made and signed written confessions, which were admitted in evidence over the objections of the petitioners. This action and ruling of the trial Court was reviewed by the Supreme Court of the State of Indiana, — Ind. —, 141 N. E. (2d) 109, and with the entire record before it such Court held that there was no error in the admission of such confessions as a part of the evidence in this cause. As stated by the Supreme Court of Indiana, there is sharp conflict in the testimony of the defendants (petitioners herein) and the testimony of the officers.

A statute of the State of Indiana enacted in 1905 (Acts 1905, Ch. 169, Sec. 239, p. 584), as found in Burns' Indiana Statutes (1956 Replacement), Section 9-1607, provides:

> "The confession of a defendant made under inducement, with all the circumstances, may be given in evidence against him, except when made under the influence of fear produced by threats or by intimidation or undue influences; but a confession made under inducement is not sufficient to warrant a conviction without corroborating evidence."

Eiffe v. State (1948), 226 Ind. 57, 61, 77 N. E. (2d) 750;

Mack v. State (1931), 203 Ind. 355, 180 N. E. 279;

Ogle v. State (1922), 193 Ind. 187, 127 N. E. 547.

The admissibility of a confession is a question to be determined by the Court and it may hear the evidence with respect thereto in the absence of the jury, and from such evidence determine the competency of the offered confession.

The burden of showing its incompetency is upon the defendant as such statute is construed by the Supreme Court of this State.

Caudill v. State (1946), 224 Ind. 531, 69 N. E. (2d) 549;
Schuble v. State (1948), 226 Ind. 299, 79 N. E. (2d) 647.

In Indiana, failure to take a prisoner before an examining magistrate as provided by statute (Acts 1939, Ch. 48, Sec. 163, p. 289), as found in Burns' Indiana Statutes [1952 Replacement], Section 47-2307, does not as a matter of law require that evidence consisting of a confession be rejected in the absence of any showing that the confession was obtained by coercion.

Willennar v. State (1949), 228 Ind. 248, 252, 91 N. E. (2d) 178;
Marshall v. State (1948), 227 Ind. 1, 10, 83 N. E. (2d) 763;
Hicks v. State (1938), 213 Ind. 277, 11 N. E. (2d) 171;

See also:

Sisk v. State (1953), 232 Ind. 214, 221, 110 N. E. (2d) 627.

A decision of a state Court resting on grounds of State procedure does not present a Federal question.

McNulty v. Calif. **(1893), 149 U. S. 645, 13 S. Ct. 959, 37 L. Ed. 882.**

Petitioners' confessions were introduced over their objections only after hearings outside the presence of the jury in which the evidence was in sharp conflict. The trial Court resolved the contradictions in the evidence in regard to coercion and intimidation against the petitioners and for the State. Failure to take the petitioners before an examining magistrate did not under Indiana Law deprive the State of jurisdiction over the petitioners and did not violate their Federal Constitutional rights. Respondent asks that the opinion of the Supreme Court of Indiana be affirmed.

Respectfully submitted,

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